

CHAPTER 1
DESCRIPTION OF ORGANIZATION
AND PROCEDURES BEFORE THE DIVISION

[Prior to 9/24/86, Labor, Bureau of [530]]

DIVISION I
ADMINISTRATION

347—1.1(91) Definitions. The definitions of terms in Iowa Code section 17A.2 shall apply to these terms as they are used throughout this chapter. In addition, as used in this chapter:

“*Commissioner*” means the labor commissioner of the division of labor services.

“*Division*” means the division of labor services of the department of employment services.

347—1.2(91) Scope and application. This chapter describes the organization of the bureau, the laws it enforces, and the methods by which and location where the public may obtain information or make submissions or requests.

347—1.3(91) Department of employment services, division of labor services. The division is the office of the commissioner and consists of the commissioner and those employees who discharge the duties and responsibilities imposed upon the commissioner by the laws of this state. The commissioner has control, supervision and authority to enforce the following chapters and sections of the Iowa Code: section 30.7, Iowa Emergency Response Commission, Duties to be Allocated to Department of Employment Services; Chapter 88, Occupational Safety and Health; Chapter 88A, Safety Inspection of Amusement Rides; Chapter 88B, Removal and Encapsulation of Asbestos; Chapter 89, Boilers and Unfired Steam Pressure Vessels; Chapter 89A, State Elevator Code; Chapter 89B, Hazardous Chemicals Risks—Right to Know; Chapter 90A, Boxing and Wrestling; Chapter 91, Division of Labor Services; Chapter 91A, Wage Payment Collection; Chapter 91C, Registration of Construction Contractors; Chapter 91D, Minimum Wage Law; Chapter 91E, Non-English Speaking Employees; Chapter 92, Child Labor; Chapter 94, State Free Employment Service and Employment Agencies; Chapter 95, License for Employment Agencies; and section 327F.37, Sanitation and Shelter. The division consists of four bureaus: Occupational Safety and Health Enforcement Bureau (enforces occupational safety and health rules in workplaces through inspections based on accidents, complaints, and programmed inspections); Occupational Safety and Health Consultation and Education Bureau (conducts occupational safety and health inspections at the request of an employer and conducts educational programming); Inspections and Reporting Bureau (conducts amusement rides, elevator and boiler inspections and maintains statistical information on the worker’s illnesses and injuries and the division’s inspection activities); and Employee Protection Bureau (responsible for child labor, wage payment and collection, minimum wage, employment agency licensing, workplace standards, asbestos removal and encapsulation contractor permits and licensing of professions engaged in removal and encapsulation, community and emergency response right to know, EPCRA, out-of-state construction contractor bonding, and construction contractor registration). The licensing and supervision of professional boxing and wrestling is the responsibility of the commissioner. Information may be obtained and submissions or requests may be made by contacting the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The telephone number is (515)281-3606. All correspondence and payment of fees and costs relating to the division shall be submitted directly to the division.

347—1.4(17A) Contested case hearings. Hearings conducted by the commissioner and the division to suspend or revoke a license, variance, certificate, permit, certification, commission, registration, or similar right of a person and the assessment of civil penalties or the imposition of sanctions against a person are held pursuant to rules in 347—Chapter 300.

347—1.5 to 1.20 Reserved.

DIVISION II
UNIFORM RULES

347—1.21(17A) Petition for rule making.

1.21(1) *Form for petition.* Any person or agency may file a petition for rule making with the division at the office of the division. A petition is deemed filed when it is received by the commissioner. The division will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DIVISION OF LABOR SERVICES

Petition by (Name of Petitioner)	:	
	:	
for the (adoption, amendment, or	:	PETITION FOR
	:	
repeal) of rules relating to	:	RULE MAKING
	:	
(state subject matter).	:	

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment of a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by 1.21(4).

The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner or petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

The division may deny a petition because it does not substantially conform to the required form.

1.21(2) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

1.21(3) Inquiries. Inquiries concerning the status of a petition for a rule making may be made to deputy labor commissioner at the division.

1.21(4) Division consideration. Within 14 days after the filing of a petition, the division will submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the division will schedule a brief and informal meeting between the petitioner and the commissioner or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division will, in writing, deny the petition, and notify the petitioner of the division's actions and

the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to the petitioner. The denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

347—1.22(17A) Petition for declaratory ruling.

1.22(1) *Form for petition.* Any person or agency may file a petition with the division for a declaratory ruling concerning the applicability of any statute, rule, policy, decision, or order, administered by the agency, at the office of the division. A petition is deemed filed when it is received by the commissioner. The division will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DIVISION OF LABOR SERVICES

Petition by (Name of Petitioner)	:	
	:	PETITION FOR
for a Declaratory Ruling on	:	
	:	DECLARATORY RULING
(Cite provision of law involved).	:	

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the ruling is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioners want answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory ruling and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 1.22(4).

The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner or petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.22(2) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition. The division may request a brief from the petitioner or from any other person concerning the questions raised in the petition.

1.22(3) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to deputy labor commissioner at the division.

1.22(4) Division consideration. Upon request by petitioner in the petition, the division will schedule a brief and informal meeting between the petitioner and the commissioner or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may solicit comments from any person

on the questions presented in the petition. Also, comments on those questions may be submitted to the division by any person.

Within 30 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division will, in writing, issue a ruling on the petition or refuse to do so. The division is deemed to have issued a ruling or to have refused to do so on the date the ruling or refusal is mailed or delivered to the petitioner.

1.22(5) *Refusal to issue ruling.* The division may refuse to issue a declaratory ruling for good cause. Good cause includes, but is not limited to, the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue a ruling.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule-making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling.
7. There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of what conduct or to challenge an agency decision already made.
9. The petition requests a declaratory ruling that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

A refusal to issue a declaratory ruling will indicate the specific grounds for the refusal and constitutes a final agency action on the petition.

Refusal to issue a declaratory ruling pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the division's refusal to issue a ruling.

1.22(6) *Contents of declaratory ruling—effective date.* In addition to the ruling itself, a declaratory ruling will contain the date of its issuance, the name of the petitioner, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory ruling is effective on the date of issuance.

1.22(7) *Effect of a declaratory ruling.* A declaratory ruling is binding on the division and the petitioner and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those contained in the petition. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the division. The issuance of a declaratory ruling constitutes final agency action on the petition.

347—1.23 to 1.49 Reserved.

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

347—1.50(22,91) Uniform rules—exceptions. The labor commissioner adopts with exceptions the Final Report of the Governor's Task Force which pertains to the Fair Information Practices Act and the public records law which is printed in the front of Volume I of the Iowa Administrative Code. Uniform rules X.1(17A,22) to X.8(17A,22) are adopted as rules 347—1.51(22,91) to 347—1.58(22,91), respectively with the following exceptions:

347—1.51(22,91) Definitions.

“Agency” in these rules means the Iowa division of labor services, but does not mean the Iowa division of job service, the Iowa division of industrial services or the Iowa department of employment services.

“Routine use” means the disclosure of a record, without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than Iowa Code chapter 22.

347—1.53(22,91) Request for access to a record.

1.53(1) Location of record. In lieu of the words “(insert agency head)” insert the words “labor commissioner”. In lieu of the words “(insert agency name and address)” insert the words “Iowa Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319”.

1.53(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)” insert the words “8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays”.

1.53(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)” insert the words “15 minutes”.

d. Advance deposits. Rescind paragraph (2) and insert the following in lieu thereof:

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require payment in full of any amount previously due and advance payment of the full amount of an estimated fee chargeable under this rule before the custodian processes a new request from that requester.

347—1.59(22,91) Disclosure without the consent of the subject.

1.59(1) An open record is routinely disclosed without the consent of the subject.

1.59(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject and usually without notice:

a. For a routine use as described in rule 347—1.60(22,91) or in the notice for a particular record system.

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that the record is transferred in a form that does not identify the subject.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. In response to a court order or subpoena.

g. Disclosures in the course of employee disciplinary proceedings.

h. To the citizens’ aide under Iowa Code section 601G.9(3) as amended by 1988 Iowa Acts, chapter 1247.

347—1.60(22,91) Routine uses. To the extent allowed by law, the following uses are considered routine uses of all agency records:

1.60(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use a confidential record.

1.60(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

1.60(3) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

1.60(4) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully, or for purposes of determining whether the agency is eligible for federal funding.

1.60(5) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

347—1.61(22,91) Consensual disclosure of confidential records.

1.61(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 347—1.57(22,91).

1.61(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

347—1.62(22,91) Release to a subject.

1.62(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 347—1.56(22,91). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report may be withheld from the subject, except as required by the Iowa Code (see Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

1.62(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

347—1.63(22,91) Data processing systems comparison. The first reports of injury data system shared between the labor services division and the industrial services division of the department of employment services is the only data processing system used by the agency which will permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

347—1.64(22,91) Availability of records.

1.64(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

1.64(2) *Confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 347—1.54(22,91). If the agency initially determines that it will release the records the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 1.54(3).

1.64(3) *Chart **. This subrule lists the agency's records in chart form and provides:

a. In column one, a description of the nature and content of the record or record system.

- b.* In column two, whether the record or record systems are open for public inspection, confidential, or are partly open and partly confidential.
- c.* Column three, the legal basis for asserting a record or record system is confidential in whole or in part.
- d.* Column four, whether the record or record system can be accessed by a personal identifier.
- e.* Column five, a description of the nature and extent of personal information that can be found in the record or record system, if any.
- f.* Column six, the legal authority, where appropriate, relied upon by the agency for the collection of personally identifiable information.
- g.* Column seven, the method of storage of the record or record system.

*See charts at the end of this chapter

347—1.65(22,91) Scope of rules. Rules 347—1.50(22,91) to 347—1.64(22,91) do not:

- 1. Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.
- 2. Make available to the general public, a record which would otherwise not be available to the general public under the public records law, Iowa Code chapter 22.
- 3. Govern the maintenance or disclosure of, notification of, or access to a record in the possession of the agency which is governed by the rules of another agency.
- 4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- 5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the general public or to any subject individual or party to the litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

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[INSERT GRAPHICS]